

**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY**

LEANDER LAKES,

Plaintiff Below,
Appellant,

v.

**RACHELLE GROVE,
DAJUN GROVE,**

Defendants Below,
Appellees.

C.A. No. JP16-19-007610

TRIAL DE NOVO

Submitted: December 6, 2019

Decided: December 10, 2019

Leander Lakes, Plaintiff/Appellant, appeared represented by Scott E. Chambers, Esquire.

Rachelle Grove, Defendant/Appellee, appeared *pro se*.

Dajun Grove, Defendant/Appellee, appeared *pro se*.

ORDER

Hutchison, DCM
Murray, J
Cox, J

On December 6, 2019 this Court, consisting of the Honorable Cathleen M. Hutchison, Deputy Chief Magistrate, the Honorable James A. Murray, and the Honorable D. Ken Cox, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ held a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Leander Lakes (hereinafter referred to as Plaintiff), against Rachelle Grove and Dajun Grove (hereinafter referred to as Defendant or Defendants). For the following reasons the Court enters judgment in favor of the **PLAINTIFF**.

FACTUAL and PROCEDURAL BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession and accrued rent. This action is based on the Defendants alleged failure to pay rent. Trial was held on November 13, 2019 and judgment was entered in favor of the Defendants.³ Plaintiff filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled and held.

TESTIMONY AND EVIDENCE

Based on the testimony and evidence presented at trial, the Court found the following *salient facts*: There is a landlord/tenant relationship between the Parties as proven by a signed lease agreement for the property located at 100 MacDonald Grove, Unit 105, Dover, DE, 19904.⁴ Parties signed said lease agreement on November 2, 2018. Monthly rent in the amount of \$1,540.00 was to be paid on the first of each month. Rent not paid by the fifth of the month would result in an

¹ 25 *Del. C.* § 5717(a), *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote.

² *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary 435 (6th ed. 1990).

³ *Leander Lakes v. Grove and Grove*, Del. J.P., C.A. No. JP16-19-007610, Sherlock, J. (Nov. 13, 2019).

⁴ Plaintiff's exhibit #1, Lease agreement.

additional late fee due in the amount of \$77.00.⁵ The lease agreement also indicates Defendants received a copy of the Landlord/Tenant Code Summary. Both Defendants admitted they have not paid any rent for September, October, November and December. Defendants were sent demand notices for past due rents.⁶ Proofs of mailings were submitted which indicates the demand notices were mailed separately to each Defendant on October 10, 2019.⁷

DISCUSSION

While admitting they have not paid any rent whatsoever recently, Defendants did present a defense for their lack of payment. Defendants advised they stopped paying rent because of a recurring mold issue in the rental unit that manifested itself sometime in January. Defendants asserted they have reached out to Plaintiff numerous times hoping to have the mold eradicated from their unit. They acknowledge Plaintiff made attempts to remediate, however the mold always returns. They expressed frustration because they feel management failed to properly remediate the mold once and forever by failing to contact an outside professional who specializes in mold remediation, and therefore, they began to withhold 100% of their rent.

While the Court understands Defendants frustration and displeasure with Plaintiff, they had remedies under the Landlord/Tenant Code (the Code) which they did not exercise. However, none of those remedies include withholding 100% of their rent. Further, even if the Court found Defendants were entitled to rent abatement under the Code, Defendants failed to notice Plaintiff in accordance with the Code about the mold issue. This lack of notice and lack of testimony as to specific

⁵ The late fee of \$77.00 is 5% of the monthly rent. This fee is allowable pursuant to 25 *Del. C.* § 5501(d).

⁶ Plaintiff's exhibit #2. Demand letter to Rachelle Grove. Plaintiff's exhibit #3. Demand letter to Dajun Grove.

⁷ Plaintiff's exhibit #4. Proof of mailing to Rachelle Grove. Plaintiff's exhibit #5. Proof of mailing to Dajun Grove.

dates, that the mold was active or inactive make it impossible for this Court to grant any rent abatement.

Whereas Defendants admitted they have not paid any rent since September and have not proven a valid reason for not doing so; Plaintiff has proven their claim and are entitled to receive all rents due since September 2019.

CONCLUSION

Based on the Court's fact-finding inquiry, the Court's above-referenced conclusions of law and by a preponderance of evidence, the Court by unanimous verdict enters ***JUDGMENT for the PLAINTIFF.***

The Court hereby enters ***JUDGMENT*** as follows:

Judgment amount: ***\$5,441.30⁸***

Possession of rental unit @ ***100 MacDonald Grove Unit 105, Dover, DE, 19904.***

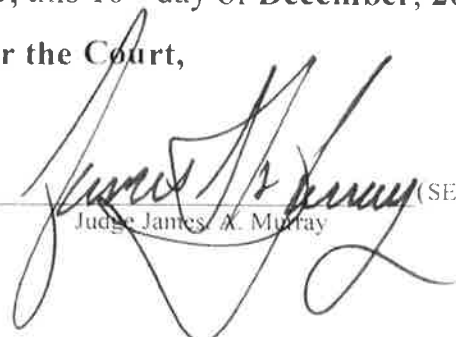
Per diem rent @ ***\$51.33*** until possession is relinquished.

Post-Judgment Interest @ ***7.25%***

The Court announced its decision and rationale in detail in open court and reduced it to writing this date.

IT IS SO ORDERED, this 10th day of **December, 2019.**

For the Court,

 (SEAL.)
Judge James A. Murray

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⁸ Judgment amount: \$5,441.30 (\$1,540.00 monthly rent for Sept., Oct. & Nov. = \$4,620.00 + per diem rent @ \$51.33 for 10 days in Dec. = \$513.30 + late fees \$77.00 per month for Sept., Oct., Nov. and Dec. = \$308.00).